

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NOEL A. SALDANA AND [REDACTED] SALDANA,
husband and wife and their marital
community,

Plaintiffs,

v.

THE CITY OF LAKEWOOD, a municipal
corporation; and JAMES SYLER, in his official
and individual capacity and JANE DOE SYLER
and their marital community,

Defendants.

NO. 11-6066-RBL

AMENDED COMPLAINT FOR DAMAGES

Plaintiffs, for their cause of action against the Defendants, complain and allege as
follows:

I. PARTIES

1.1. At all times material herein, plaintiffs Noel A. Saldana and [REDACTED] Saldana
have been residents of Pierce County in the State of Washington.

1.2. The Defendant City of Lakewood is a municipal corporation that provides
police protection and services to its citizens and residents through the
Lakewood Police Department. Defendant City of Lakewood was the

1 employer of defendant James Syler at the time of the incident alleged
2 herein.

3 1.3. The Defendant James Syler, and Jane Doe Syler, whose true name is
4 unknown to the Plaintiffs, were husband and wife and composed a marital
5 community under the laws of the State of Washington. That all acts
6 hereinafter alleged of Defendant James Syler were done on his own behalf
7 and on behalf of the marital community.
8

9 **II. JURISDICTION AND VENUE**

10 2.1. All acts and omissions alleged in this complaint occurred in Pierce County,
11 Washington and the court has jurisdiction of this action and the persons of
12 the parties hereto under R.C.W. 4.12.020. Venue is properly established in
13 this judicial district pursuant to R.C.W. 4.12.020 and R.C.W. 4.96.020.
14

15 2.2. Plaintiffs filed a claim for damages regarding the torts alleged in this
16 action. The claims were presented to the City of Lakewood Department of
17 General Services on January 10, 2011.
18

19 **III. FACTS**

20 3.1. On or about June 27, 2010, Plaintiff Noel Saldana went to the apartment
21 he legally shared with his wife, Plaintiff [REDACTED] Saldana, and their children.
22 At that time, the couple were having some marital struggles, and therefore
23 Noel Saldana was staying at his mother's apartment, which was located
24 approximately 100 yards from his own apartment. Before [REDACTED] could
25 open the door all the way, Noel pushed on the door to squeeze through,
26 which inadvertently caused the door to strike [REDACTED]'s wrist. Noel did not

1 kick in the door, and [REDACTED] had no injuries or even redness to her wrist.
2 When Noel was inside the house, he did not threaten to harm [REDACTED] in
3 any manner. Instead, Noel went to see the sleeping children in their room.
4 Because it was late, [REDACTED] told Noel that he needed to leave or she would
5 contact the police, and therefore he walked out of the apartment.
6

7 3.2. [REDACTED] contacted the authorities and told the dispatcher that Noel had
8 pushed his way into the apartment. [REDACTED] also expressly informed the
9 authorities that Noel did not have any weapons. [REDACTED] did not claim that
10 she had been injured in any way, and did not assert that Noel was a danger
11 to her, the community, or a threat to officer safety. Indeed, Noel has no
12 violent criminal history, or a history of resisting arrest or fleeing from
13 officers.
14

15 3.3. After leaving the apartment, Noel walked across the parking lot to his
16 mother's apartment to try and go to sleep. Unable to get in to her
17 apartment, he then started walking to his sister's house which was also
18 nearby.
19

20 3.4. City of Lakewood Police Officers, including K-9 dog handler James Syler,
21 responded to the telephone call from [REDACTED] Saldana. Mr. Saldana was
22 walking on a gravel sidewalk when K-9 police dog Astor approached him
23 under the direct supervision of defendant James Syler. Defendant Syler
24 ordered Mr. Saldana to turn around and drop down to the ground. Mr.
25 Saldana complied and dropped to the ground near some bushes. Even
26

1 though he was unarmed, and not a threat to officer safety, Defendant Syler
2 released K-9 police dog Astor to attack Mr. Saldana.

3 3.5. K-9 Astor ripped into the back of Mr. Saldana's left leg. Astor continued
4 chewing on Mr. Saldana's leg for several minutes, with Defendant Syler
5 repeatedly encouraging Astor to continue the brutal attack. The dog
6 thrashed his head back and forth and kept biting, and Mr. Saldana could
7 hear his flesh and muscle tearing. After several minutes, the dog was
8 eventually pulled off.

9
10 3.6. Defendant Syler pulled Mr. Saldana up to standing position, kicking his legs
11 open. Mr. Saldana's leg was bleeding profusely. Defendant Syler had Mr.
12 Saldana hold and twist his own pants in an attempt to control the bleeding,
13 and Defendant Syler immediately called for medical assistance.

14
15 3.7. An ambulance took Mr. Saldana to the hospital. Mr. Saldana was rushed
16 into the operating room with multiple bite wounds to the left lower leg. His
17 injuries included a significant wound measuring more than 12 centimeters
18 by 7 centimeters in dimension covering the entire calf region, several bites
19 measuring 4 to 5 centimeters each, puncture wounds, and lacerations.
20 One wound was deep enough to expose several centimeters of leg bone.
21 These injuries required surgical debridement, staples and a skin graft,
22 painful and costly procedures. Skin was taken from Mr. Saldana's right leg
23 and was grafted onto his left leg. Mr. Saldana has lost a significant
24 amount of range of motion in his knee, walks with a permanent limp, and
25 has substantial scarring on both of his legs.
26

1 3.8. No criminal charges were filed against Mr. Saldana or Defendant Syler in
2 this matter.

3 3.9. The City of Lakewood has had extensive problems with its K-9 policies and
4 practices, including, but not limited to, problems with Astor. Since
5 acquiring Astor on June 18, 2006, Astor, with the involvement of his
6 handler Defendant Syler, has maimed and permanently injured multiple
7 individuals in the community, resulting in at least four lawsuits against the
8 City: Julian Curry was injured on January 26, 2008, when Astor was
9 released and allowed to attack and chew on Mr. Curry for several minutes,
10 causing serious and permanent leg damage, even though he was being
11 subdued by multiple officers at the time. Curry was hospitalized, and
12 doctors commented that it was the worst dog bite they had ever seen;
13 Richard Conley was injured on September 26, 2009, when he was
14 attacked by Astor, even though Mr. Conley was laying down on the floor
15 with his arms and legs spread, he was not resisting, and there was no
16 danger to officer safety. The attack was allowed to continue for a lengthy
17 period of time, causing severe injuries to his shoulder and arm, and
18 requiring hospitalization for nine days; Plaintiff Noel Saldana was injured
19 on June 27, 2010, after Astor was released and allowed to maim plaintiff
20 for a lengthy period of time; Chad Boyles was injured on May 7, 2011 after
21 Astor was released and allowed to maim Mr. Boyles's arm, even though Mr.
22 Boyles had committed no crime and was not a risk to officer safety.
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1 3.10. In each of the above incidents known to date, Astor was released upon
2 individuals and allowed to attack for lengthy periods of time, resulting in
3 severe and permanent maiming injuries. In each case, officer safety was
4 not at risk, and/or the severity of the crimes and situation did not warrant
5 the use of canine force by Defendant Syler and Astor. Upon information
6 and belief, there are numerous other instances where Astor and other
7 canine dogs owned by the City of Lakewood were used to improperly inflict
8 excessive force on citizens. The excessive use of force in these cases, and
9 in others, are indicative of an official policy and practice of deliberate
10 indifference by the City, inadequate training of its officers, inadequate
11 supervision of K-9 officers, which created and encouraged an atmosphere
12 of lawlessness out of which the Plaintiffs' injuries arose.

13
14
15 3.11. Upon information and belief, the City of Lakewood Police Department has a
16 policy that allows and promotes the excessive use of force to be utilized
17 through their K-9 dogs upon citizens, where the circumstances and facts
18 do not warrant such a level of force.

19
20 3.12. Defendants were aware or should have been aware that the use of canine
21 dogs that can permanently maim and cripple citizens requires special
22 procedures, policies, and customs to be used so as to not unnecessarily
23 harm them, or members of the public. The failure to promulgate and
24 implement such procedures, policies or customs caused the perpetuation
25 of procedures, policies or customs leading directly to the use of excessive
26 and unreasonable force against the Plaintiff.

1 3.13. Defendants acted under color of law in their official capacity, to deprive
2 Plaintiff of his right to be free from the excessive use of force in the seizure
3 of his person, as secured to Plaintiff by the Fourth and Fourteenth
4 Amendments to the Constitution of the United States and by 42 U.S.C.
5 Section 1983 and 1988.
6

7 **CLAIMS AND CAUSES OF ACTION**

8 **IV. VIOLATION OF PLAINTIFF'S CIVIL RIGHTS UNDER 42 U.S.C. §1983 BY**
9 **DEFENDANT SYLER**

- 10 4.1. Plaintiffs reallege paragraphs 1.1 through 3.13 above.
- 11 4.2. In committing the acts above, Defendant James Syler, an officer of the
12 Lakewood Police Department, acted under color of state law to deprive the
13 Plaintiff of certain constitutionally protected rights under the Fourth and
14 Fourteenth Amendments, including the right to be free from excessive use
15 of force by persons acting under color of state law.
16
- 17 4.3. During the process of locating and seizing Plaintiff Noel Saldana, and under
18 the direct supervision of Defendant Syler, K-9 police dog Astor located Mr.
19 Saldana and used unnecessary and excessive force by biting, ripping into,
20 and shredding Mr. Saldana's leg.
21
- 22 4.4. During the locating of Mr. Saldana, Defendant James Syler, an officer of the
23 Lakewood Police Department, was present and observing the K-9 police
24 dog Astor tear apart Mr. Saldana's leg and had the ability and responsibility
25 to stop it, but did not take reasonable, timely, and effective steps to do so.
26

1 Instead, Defendant Syler encouraged the attack to continue on Mr.
2 Saldana.

3 4.5. In this manner, the force used by Defendant to subdue and seize Mr.
4 Saldana was excessive under the facts and circumstances as they were
5 known to the officer. The conduct of Defendant Syler was unreasonable
6 and violated Mr. Saldana's rights under the Fourth Amendment to the
7 United States Constitution and under 42 U.S.C. §1983, when other more
8 reasonable and less drastic methods were available.
9

10 4.6. As a result of the acts of the Defendant, plaintiffs have suffered, and
11 continue to suffer, injury to body and mind, pain, emotional distress,
12 disfigurement, disability, and are entitled to relief under 42 U.S.C. §1983.
13

14 4.7. The conduct of Defendant Syler was willful, malicious, oppressive and/or
15 reckless, and was of such a nature that punitive damages should be
16 imposed in an amount commensurate with the wrongful acts alleged
17 herein.
18

19 **V. NEGLIGENCE – DEFENDANT SYLER**

20 5.1. Plaintiffs reallege paragraphs 1.1 through 4.7 above.

21 5.2. Defendant Syler knew or should have known police dog Astor's propensity
22 for danger, and failed to train, handle, and utilize the dog in a reasonable
23 manner. Defendant Syler owed plaintiff Noel Saldana a duty of care not to
24 cause unreasonable and egregious bodily harm and a duty to follow the law
25 of the State of Washington.
26

1 5.3. Defendant Syler breached this duty when he failed to exercise proper
2 control over police dog Astor during the detention and arrest of Mr.
3 Saldana, allowing the dog to attack Mr. Saldana, and to continue to attack
4 Mr. Saldana for a lengthy period of time, when less severe alternatives
5 existed.

6
7 5.4. As a direct and proximate result of this negligence, Plaintiffs suffered
8 damages and will continue to incur substantial damages in an amount to
9 be established at trial.

10 **VI. NEGLIGENCE USE OF EXCESSIVE FORCE – DEFENDANT SYLER**

11 6.1. Plaintiffs reallege paragraphs 1.1 through 5.4 above.

12
13 6.2. Defendant Syler had a duty to refrain from using force excessively and
14 unreasonably and a duty to follow the law of the State of Washington.

15 6.3. Defendant Syler breached this duty when he negligently used excessive
16 force to arrest Plaintiff Noel Saldana.

17
18 6.4. As a direct and proximate result of this negligence, Plaintiffs suffered
19 damages and will continue to incur substantial damages in an amount to
20 be established at trial.

21 **VII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST**
22 **DEFENDANT SYLER**

23 7.1. Plaintiffs reallege paragraphs 1.1 through 6.4 above.

24 7.2. At all times relevant herein, the City of Lakewood was the employer of
25 Defendant Syler and the officer was acting within the scope of employment.
26

1 7.3. Defendant Syler's actions in turning loose the dog Astor to seize Plaintiff
2 Saldana, and then encouraging the dog to continue mauling the Plaintiff's
3 body, is outrageous conduct.

4 7.4. Defendant City of Lakewood is liable for Defendant Syler's outrageous
5 conduct under the theory of respondeat superior.
6

7 7.5. As a direct and proximate result of this outrageous conduct, Plaintiffs
8 suffered damages, and will continue to incur substantial damages, in an
9 amount to be established at trial.

10 **VIII. ASSAULT AND BATTERY AGAINST DEFENDANT SYLER**

11 8.1. Plaintiffs reallege paragraphs 1.1 through 7.5 above.
12

13 8.2. On or about June 27, 2010, defendant James Syler, while acting as an
14 agent of the defendant City of Lakewood, within the scope of his
15 employment, breached a duty of care owed to Plaintiff Noel Saldana to not
16 assault him or cause him physical harm or injury, except to the extent
17 allowed by law.
18

19 8.3. Defendant Syler knowingly, wantingly, intentionally, and with gross
20 disregard for the rights of Plaintiff Noel Saldana, assaulted him by turning
21 loose canine dog Astor, and encouraging and allowing Astor to bite and to
22 continue to maul Plaintiff's leg and body.
23

24 8.4. As a direct and proximate result of this assault, Plaintiffs suffered damages
25 and will continue to incur substantial damages in an amount to be
26 established at trial.

IX. VIOLATION OF PLAINTIFF'S CIVIL RIGHTS UNDER 42 U.S.C. SECTION 1983 BY
THE CITY OF LAKEWOOD

9.1. Plaintiffs reallege paragraphs 1.1 through 8.4 above.

9.2. The City of Lakewood, by and through its policy makers, implicitly or explicitly adopted and implemented purposeful and/or careless and reckless policies, customs, or practices, that included, among other things, allowing employees of the Lakewood Police to Department use canine force without reasonable training and in such a way as to cause the excessive use of force on citizens without lawful justification and where other more reasonable and less severe alternatives existed.

9.3. Furthermore, the City of Lakewood failed to adequately supervise the performance of members of the canine unit to ensure that both misbehaving dogs and officers exhibiting bad judgment in the use of canine force received corrective training. Such inadequacies are the result of a formal or informal city policy or practice which created and encouraged an atmosphere of lawlessness, and deliberate indifference to the constitutional rights of citizens to be free from the excessive use of force, of which the Plaintiffs here are one example.

9.4. As a result of the acts of the City of Lakewood, plaintiffs have suffered, and continue to suffer, injury to body and mind, pain, emotional distress, disfigurement, disability, and are entitled to relief under 42 U.S.C. Section 1983.

1 9.5. In committing the acts complained of herein, Defendant City of Lakewood
2 acted under color of state law to deprive the plaintiff of his constitutionally
3 protected right to be free from the excessive use of force.

4 **X. NEGLIGENCE - THE CITY OF LAKEWOOD**

5 10.1. Plaintiffs reallege paragraphs 1.1 through 9.5 above.

6 10.2. The City of Lakewood had a duty to adequately train its canine unit in the
7 proper use of canine force. The City of Lakewood also had a duty to
8 adequately supervise the performance of members of the canine unit to
9 ensure that both misbehaving dogs and officers exhibited bad judgment in
10 the use of canine force received corrective training or were removed from
11 service.
12

13 10.3. The City of Lakewood failed to adequately train its canine unit in the proper
14 use of canine force. Furthermore, the City of Lakewood failed to adequately
15 supervise the performance of members of the canine unit to ensure that both
16 misbehaving dogs and officers exhibiting bad judgment in the use of canine
17 force received corrective training.
18

19 10.4. The City of Lakewood knew or should have known police dog Astor's
20 propensity for danger, and Officer Syler's inappropriate use of canine force
21 with Astor. The City had a duty to not cause unreasonable and egregious
22 bodily harm to members of the public, where such canine force was not
23 called for by the circumstances.
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1 10.5. The City of Lakewood breached its duties to the Plaintiffs, and as a direct and
2 proximate result, Plaintiffs suffered damages and will incur substantial
3 damage in an amount to be established at trial.

4 **XI. STRICT LIABILITY AGAINST THE CITY OF LAKEWOOD**

5 11.1. Plaintiffs reallege paragraphs 1.1 through 10.5 above.

6 11.2. Defendant City of Lakewood is the owner of Astor, and strictly liable for the
7 injuries inflicted by the dog pursuant to RCW 16.08.040.

8 11.3. As a direct and proximate result of the injuries caused by its K-9 Astor,
9 Plaintiffs suffered damages, and will continue to incur damages, in an
10 amount to be established at trial.

11 **XII. VICARIOUS LIABILITY OF THE CITY OF LAKEWOOD**

12 12.1. Plaintiffs reallege paragraphs 1.1 through 11.3 above.

13 12.2. At all times relevant, the City of Lakewood by and through the Lakewood
14 Police Department was the employer of Officer Syler and the officer was
15 acting within the scope of employment. Defendant City of Lakewood is liable
16 for the negligence and negligent use of excessive force by Defendant Syler
17 and his police dog Astor under the theory of respondeat superior.

18 **XIII. DAMAGES**

19 13.1. As a direct and proximate result of the said acts and failures to act of the
20 defendant Syler and the acts and failures to act of the City of Lakewood
21 through the Lakewood Police Department, described in the previous
22 paragraphs, the plaintiff Noel Saldana suffered severe and permanent
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injuries and damages, and will continue to suffer in the future, damages including but not limited to:

- a. Physical pain and suffering including permanent disfigurement requiring the expenditure of money for treatment;
- b. Psychological and emotional injuries past and future requiring the expenditure of money for treatment;
- c. Fear, emotional distress, humiliation, psychological distress, loss of enjoyment of life, and embarrassment past and future;
- d. Economic and non-economic damages, including loss of income, past and future, in an amount to be established at trial.
- e. Violation of constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution;

13.2. As a direct and proximate result of the said acts and failures to act of the Defendant Syler and the acts and failures to act of the City of Lakewood through the Lakewood Police Department, described in the previous paragraphs, the plaintiff Jessica Saldana suffered and will continue to suffer in the future, the loss of the care, service, companionship, society and consortium of her husband, Noel Saldana, the exact amount of which will be established at the time of trial.

13.3. The actions of the Defendants were done under color of law violated the following clearly established and well-settled federal constitutional rights of the plaintiff Noel Saldana, as described above.

XIV. PRAYER FOR RELIEF

For the reasons stated above, Plaintiffs pray for the following relief:

- a. For judgment against each of the Defendants, jointly and severally, for monetary special damages in an amount to be determined at trial;
- b. For judgment against each of the Defendants, jointly and severally, for general compensatory damages in an amount to be determined at trial;
- c. For judgment against each of the Defendants, jointly and severally, for loss of consortium claims, in amount to be determined at trial;
- d. For judgment for punitive damages pursuant to 42 U.S.C. §1983;
- e. For attorney fees and costs authorized by statute, including reasonable attorney's fees pursuant to 42 U.S.C. §1988; and
- f. For such other relief as the court deems just.

DATED at Seattle this 13th day of July, 2012.

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CERTIFICATE OF SERVICE

I certify that on the 13th day of July, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF Electronic Filing System which will send notification of such filing to all parties of record.

s/ Linda Vandiver

Linda Vandiver, Legal Assistant